

1 KAMALA D. HARRIS
Attorney General of California
2 JOSE R. GUERRERO
Supervising Deputy Attorney General
3 DAVID CARR
Deputy Attorney General
4 State Bar No. 131672
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-5538
6 Facsimile: (415) 703-5480

7 *Attorneys for Complainant*

FILED - STATE OF CALIFORNIA
Speech-Language Pathology & Audiology
& Hearing Aid Dispensers Board
Sacramento, California on February 22, 2011

By *Gronne Crawford*

8 **BEFORE THE**
9 **SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY**
10 **AND HEARING AID DISPENSERS BOARD**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
12 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

13 **CINDY RICHARDSON**

14 **P.O. Box 6955**
15 **San Mateo, CA 94403**

16 **Hearing Aid Dispenser License No. HA 3839**
17 **Audiologist License No. AU 1810**

18 Respondent.

Case No. 11 2010 12

OAH No.

19 **A C C U S A T I O N**

20 Complainant alleges:

21 **PARTIES**

22 1. Annemarie Del Mugnaio ("Complainant") brings this Accusation solely in her official
23 capacity as the Executive Officer of the Speech-Language Pathology and Audiology and Hearing
24 Aid Dispensers Board¹ ("the Board"), Department of Consumer Affairs.

25
26
27 ¹ Effective January 1, 2010, the responsibilities and jurisdiction of the former Hearing
28 Aid Dispensers Bureau were transferred to the Speech-Language Pathology and Audiology and
Hearing Aid Dispensers Board. (Business & Professions Code section 3320.)

2. On or about January 11, 1999, the then-titled Hearing Aid Dispensers Bureau issued Hearing Aid Dispenser License Number HA 3839 to Cindy Richardson ("Respondent"). The Hearing Aid Dispenser License expired on January 31, 2011, and has not been renewed.

3. On or about April 14, 1998, the then-titled Speech-Language Pathology and Audiology Board issued Audiologist License Number AU 1810 to Cindy Richardson. The Audiologist License was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2011, unless renewed. As set out in the recitation of relevant statutes below, both of Respondent's licenses are subject to disciplinary action by the Board.

JURISDICTION

4. This Accusation is brought before the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board ("Board"), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

5. Section 3401 provides that the Board may deny, issue subject to terms and conditions, suspend or revoke a hearing aid dispensers license, or impose conditions of probation upon a licensee, for any of the following causes:

"(a) ...

"(l) Violation of any provision of this chapter or of any regulation adopted pursuant to this chapter.

"(m) Any cause that would be grounds for denial of an application for a license. (See section 480, *infra*.)

"..."

6. Section 2533 provides that the Board may suspend, revoke, or impose terms and conditions upon the audiology license of any licensee guilty of unprofessional conduct, which includes but is not limited to:

"(a)....

"(e) Committing a dishonest or fraudulent act that is substantially related to the qualifications, functions, or duties of a licensee.

1 "...."

2 7. Section 2530.2(k) defines the practice of audiology to include the selling of hearing
3 aids.

4 8. Section 480(2) states that a board may deny a license if the applicant has committed
5 any act involving dishonesty, fraud or deceit with the intent to benefit himself or herself.

6 9. Section 118(b) provides that the expiration of a license issued by the Board during
7 any period in which it may be renewed does not deprive the Board of its authority to initiate or
8 continue a disciplinary action against the licensee.

9 10. Section 3452 allows an expired license to be renewed at any time within three years
10 after its expiration.

11 11. Section 125.3 of the Code states:

12 "(a) Except as otherwise provided by law, in any order issued in resolution of a
13 disciplinary proceeding before any board within the department or before the Osteopathic
14 Medical Board, the board may request the administrative law judge to direct a licentiate
15 found to have committed a violation or violations of the licensing act to pay a sum not to
16 exceed the reasonable costs of the investigation and enforcement of the case.

17 "(b) In the case of a disciplined licentiate that is a corporation or a partnership, the
18 order may be made against the licensed corporate entity or licensed partnership.

19 "(c) A certified copy of the actual costs, or a good faith estimate of costs where
20 actual costs are not available, signed by the entity bringing the proceeding or its designated
21 representative shall be prima facie evidence of reasonable costs of investigation and
22 prosecution of the case. The costs shall include the amount of investigative and
23 enforcement costs up to the date of the hearing, including, but not limited to, charges
24 imposed by the Attorney General.

25 "(d) The administrative law judge shall make a proposed finding of the amount of
26 reasonable costs of investigation and prosecution of the case when requested pursuant to
27 subdivision (a). The finding of the administrative law judge with regard to costs shall not be
28 reviewable by the board to increase the cost award. The board may reduce or eliminate the

1 cost award, or remand to the administrative law judge where the proposed decision fails to
2 make a finding on costs requested pursuant to subdivision (a).

3 "(e) Where an order for recovery of costs is made and timely payment is not made as
4 directed in the board's decision, the board may enforce the order for repayment in any
5 appropriate court. This right of enforcement shall be in addition to any other rights the
6 board may have as to any licentiate to pay costs.

7 "(f) In any action for recovery of costs, proof of the board's decision shall be
8 conclusive proof of the validity of the order of payment and the terms for payment.

9 "(g)(1) Except as provided in paragraph (2), the board shall not renew or reinstate the
10 license of any licentiate who has failed to pay all of the costs ordered under this section.

11 "(2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally
12 renew or reinstate for a maximum of one year the license of any licentiate who
13 demonstrates financial hardship and who enters into a formal agreement with the board to
14 reimburse the board within that one-year period for the unpaid costs.

15 "(h) All costs recovered under this section shall be considered a reimbursement for
16 costs incurred and shall be deposited in the fund of the board recovering the costs to be
17 available upon appropriation by the Legislature.

18 "(i) Nothing in this section shall preclude a board from including the recovery of the
19 costs of investigation and enforcement of a case in any stipulated settlement.

20 "(j) This section does not apply to any board if a specific statutory provision in that
21 board's licensing act provides for recovery of costs in an administrative disciplinary
22 proceeding."

23 12. Section 3362 requires that licensed hearing aid dispensers notify the Board in writing
24 of the address where he or she engages in the practice of selling hearing aids.

25 13. Section 3364 of the Code states:

26 "(a) Every licensee who engages in the practice of fitting or selling hearing aids
27 shall have and maintain an established retail business address to engage in such fitting or
28

1 selling, routinely open for service to customers or clients. The address of the licensee's
2 place of business shall be registered with the bureau as provided in Section 3362.

3 "(b) Except as provided in subdivision (c), if a licensee maintains more than one
4 place of business within this state he or she shall apply for and procure a duplicate license
5 for each branch office maintained. Such application shall state the name of the person and
6 the location of the place or places of business for which such duplicate license is desired.

7 "(c) A hearing aid dispenser may, without obtaining a duplicate license for a branch
8 office, engage on a temporary basis in the fitting or selling of hearing aids at the primary or
9 branch location of another licensee's business or at a location or facility which he or she
10 may use on a temporary basis, provided, that, such hearing aid dispenser notifies the
11 bureau in advance, in writing, of the dates and addresses of such businesses, locations
12 or facilities at which he or she will engage in the fitting or selling of hearing aids."

13 14. Section 3429 makes it unlawful to engage in the practice of fitting or selling hearing
14 aids without the licensee having and maintaining an established business address, routinely open
15 for service to clients, as required by section 3364.

16 **FIRST CAUSE FOR DISCIPLINE**

17 (Dishonest Act—purchaser M.W.²)

18 15. Respondent is subject to disciplinary action under sections 3401(m) and 480(2) in that
19 she committed a dishonest act in the course of selling a hearing aid. The circumstances are as
20 follows:

21 16. On or about March 13, 2010 Respondent contracted to sell M.W. two hearing aids for
22 a total price of \$3,765.00. M.W. paid Respondent a deposit of \$1,783.00 by check that day.
23 Respondent cashed the checks soon thereafter.

24 17. On or about April 5, 2010 M.W. attempted to contact Respondent to inquire about the
25 undelivered hearing aids by calling the telephone number Respondent provided in the sales
26

27 ² To preserve confidentiality, the subject clients are identified by their initials only. The
28 individuals' full names will be provided to Respondent upon request.

1 contract; there was no answer. M.W. attempted to contact Respondent by leaving a message at
2 another telephone number Respondent had provided; Respondent never returned the call. The
3 director of the assisted-living facility where M.W. resides wrote a letter of inquiry on M.W.'s
4 behalf to Respondent at the only address Respondent provided on the contract—a P.O. Box
5 number. The letter was returned as undeliverable. Respondent has not contacted M.W.
6 regarding the undelivered hearing aids nor has she refunded the \$1,783.00 M.W. paid to
7 Respondent as a deposit on the hearing aids.

8 18. Respondent has subjected her licenses to discipline by committing a dishonest act,
9 cause for disciplinary action pursuant to sections 3401(m) and 480(2).

10
11 **SECOND CAUSE FOR DISCIPLINE**
(Dishonest Act—purchaser J.T.)

12 19. Respondent is subject to disciplinary action under sections 3401(m) and 480(2) in that
13 she committed a dishonest act in the course of selling a hearing aid. The circumstances are as
14 follows:

15 20. On or about March 23, 2010 Respondent offered to provide J.T. with hearing aids.
16 J.T. paid Respondent a total of \$2,080.00 in the form of two personal checks made on or about
17 March 23 and March 25, 2010 as a deposit for the hearing aids. Respondent cashed the checks
18 soon thereafter. Respondent did not provide the hearing aids nor has Respondent refunded the
19 deposit J.T. paid her for the hearing aids.

20 21. Respondent has subjected her license to discipline by committing a dishonest act,
21 cause for disciplinary action pursuant to sections 3401(m) and 480(2).

22
23 **THIRD CAUSE FOR DISCIPLINE**
(Dishonest Act—purchaser M.K.)

24
25 22. Respondent is subject to disciplinary action under sections 3401(m) and 480(2) in that
26 she committed a dishonest act in the course of selling a hearing aid. The circumstances are as
27 follows:

28 ///

1 22. On or about December 29, 2009 Respondent executed a contract to sell M.K. a pair of
2 hearing aids for M.K.'s mother. The contract presents Respondent's business address as "P.O.
3 Box 6955, San Mateo, CA." M.K. paid Respondent \$1, 852.50 by personal check as a deposit
4 on the purchase of the hearing aids. Respondent cashed the check soon thereafter.

5 23. Respondent went to M.K.'s mother's assisted living facility in early February, 2010
6 and fitted her for the purchased hearing aids but Respondent never provided the hearing aids.
7 M.K.'s attempts to reach Respondent by telephone were unavailing.

8 24. On March 10, 2010 M.K. sent a letter to Respondent's address as listed on the
9 contract, requesting a refund of the deposit amount paid to Respondent for the undelivered
10 hearing aids. Respondent's written reply, dated March 11, 2010, acknowledges M.K.'s letter but
11 makes no specific arrangements to either effect delivery of the hearing aids or to refund the
12 amount paid for the hearing aids. A March 10, 2010 letter from the Board to Respondent at her
13 address of record—the same address at which M.K.'s written communication of the same date
14 was directed and to which Respondent replied—requesting a written response to the particulars of
15 M.K.'s complaint regarding the undelivered hearing aids has gone unanswered. Respondent has
16 neither refunded the deposit money paid by M.K. nor delivered the hearing aids.

17 25. Respondent has subjected her license to discipline by committing a dishonest act,
18 cause for disciplinary action pursuant to sections 3401(m) and 480(2).

19
20 **FOURTH CAUSE FOR DISCIPLINE**
 (Failure to Maintain Business Address)

21 26. The allegations of paragraphs 11 through 20 above are incorporated herein by
22 reference as if fully set out. Respondent is subject to disciplinary action in that, while engaged in
23 the fitting or selling of hearing aids, she failed to have and to maintain an established retail
24 business address which was routinely open for service to customers or clients, a violation of
25 section 3364 and thereby a cause for discipline under section 3401(l).

26 ///

FIFTH CAUSE FOR DISCIPLINE
(Failure to Register Business Address)


28. The allegations of paragraphs 11 through 20 above are incorporated herein by reference as if fully set out. Respondent is subject to disciplinary action in that, while engaged in the fitting or selling of hearing aids, she failed to register the business address at which she engaged or intended to engage in the selling of hearing aids, a violation of section 3362 and thereby a cause for discipline under section 3401(l)

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board issue a decision:

1. Revoking or suspending Hearing Aid Dispenser License Number HA 3839, issued to Cindy Richardson;
2. Revoking or suspending Audiologist License Number AU 1810, issued to Cindy Richardson;
3. Ordering Cindy Richardson to pay the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and
4. Taking such other and further action as deemed necessary and proper.

DATED: February 22, 2011


ANNEMARIE DEL MUGNAIO
Executive Officer
Speech-Language Pathology and Audiology
and Hearing Aid Dispensers Board
Department of Consumer Affairs
State of California
Complainant

SF2011200034
accusation.rtf